

1 Holsenback APC
2 J. Daniel Holsenback, Esq. (SBN 145640)
3 701 B Street, Suite 370
4 San Diego, CA 92101
5 Telephone: (619) 269-4634
6 Facsimile: (619) 269-4635

7 Attorneys for Creditor-Plaintiffs DDC, LLC
8 And Soledad Properties Idaho, LLC

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 In re:

13 ROBERT RUBIO,

14 Debtor.

15 DDC, LLC, a California limited liability
16 company, and Soledad Properties Idaho,
17 LLC, an Idaho limited liability company,

18 Plaintiffs,

19 vs.

20 ROBERT RUBIO, an individual, RUBIO
21 INVESTMENTS, LLC, a California limited
22 liability company,

23 Defendants.

24 AND RELATED CROSS-ACTION
25
26
27
28

Adversary Case No. 09-90218-LT7

Chapter 7 Case No. 09-02136-LT

Judge: Hon. Laura S. Taylor

Dept.: 3

Hearing Date: September 29, 2010

Hearing Time: 11:00 A.M.

**PLAINTIFFS' REQUEST FOR AN
EXTENSION TO DEADLINE TO FILE
MOTION FOR LEAVE TO AMEND
AND HEARING DATE THEREON**

1 Plaintiffs allege, in their operative Second Amended Complaint (dated December 17,
2 2009), a claim for exception to discharge for breach of fiduciary duty under 11 U.S.
3 523(a)(6). (See, SAC ¶ 60-64.) Plaintiffs also allege that Defendants obtained "loans" for
4 the Lamont Street investment which were not disclosed until significant interest had been
5 paid. (SAC ¶ 35, 38, 40.) Plaintiffs intend to seek leave of Court to amend their allegations
6 to include that Defendant Robert Rubio obtained these undisclosed loans from friends and
7 family, they were of high interest rates, the interest was paid back while Plaintiffs lost their
8 entire investment, and that Rubio's own father even received ownership of one of the
9 Lamont Street condos, condos which had been promised to Plaintiffs (to induce the
10 investment) if there was no profit on the project. In addition, Plaintiffs intend to allege that
11 they were previously involved in an investment project with Mr. Rubio's father, who acted
12 through Rubio's personal LLC, Defendant Rubio Investments (which Rubio identified on his
13 bankruptcy schedules as 100% owned by him and worth \$0). These factual allegations are
14 important because Rubio has objected to all discovery into the nature of these loans and how
15 the money was used, since the funds were funneled through Rubio Investments, and Rubio
16 will not produce any of the relevant financial information for that entity (only information
17 for Lamont Street 4, LLC). Plaintiffs previously asserted a claim for exception to discharge
18 for fraud or defalcation in a fiduciary capacity, 11 U.S.C. 523(a)(4), and intend to request
19 leave to add that claim based on these allegations. If Plaintiffs do not seek leave to re-assert
20 this claim, the additional allegations are still important to support Plaintiffs' discovery.
21

22 At the hearing on August 26, 2010 on Plaintiff's motions to compel further responses
23 to 30 of its 33 second set of requests for production of documents (regarding Rubio
24 Investments' financials), the Court continued Plaintiff's motion to September 29, 2010,
25 allowing Plaintiffs to file a motion for leave to amend the pleadings to include these
26 additional factual allegations to support discovery into Rubio Investments, Inc. The Court
27 set a deadline of September 1, 2010 for Plaintiffs' motion to be filed, with the motion to also
28 be heard on September 29, 2010.

1 Plaintiffs' counsel intended to timely file the motion to amend, but became very ill
2 and unable to work on Sunday, August 29, 2010. Counsel was diagnosed with pneumonia
3 on Wednesday, September 1, 2010, and was unable to draft the motion to amend (or
4 complete other work in other cases). A true and correct copy of the doctor's diagnosis and
5 work limitations note is attached hereto as Exhibit "A". Plaintiffs' counsel discussed this
6 issue with Defendants' counsel, Bernard Hansen, and Mr. Hansen graciously stipulated to a
7 continuance of the motion hearing date and last day to file Plaintiffs' motion to amend. A
8 true and correct copy of Mr. Hansen's agreement is attached hereto as Exhibit "B".

9 Plaintiffs' motion to amend will be straightforward, and will explain that the facts to
10 be added have existed and were known by Defendants from the initial pleading, but Plaintiffs
11 erroneously omitted these facts and associated claim from their operative pleading. As trial
12 has not been set and there is ample time for any further discovery into the "new" allegations,
13 there is little prejudice in granting a brief, one-week continuance to the motion hearing date
14 and filing deadline. To the extent the Court cannot change the hearing date (which was also
15 the continued hearing date for Plaintiffs' motion to compel), Plaintiffs ask that the Court
16 grant a one-week continuance to the filing deadline (making it September 8, 2010), and
17 Plaintiffs will waive their right to file a reply brief, with the motion determined based on the
18 moving papers and Defendants' opposition. Plaintiffs appreciate the Court's consideration
19 of this unforeseen issue, and apologize for any inconvenience the delay may cause for the
20 Court or Defendants. Plaintiffs will submit an appropriate Order if the Court grants their
21 request, and will try to file and serve the motion to amend before the continued deadline.
22

23 DATED: 9/1/10

HOLSENBACK APC



24
25
26 By: _____

J. Daniel Holsenback, Esq. for
Creditor-Plaintiffs DDC, LLC and
Soledad Properties, LLC

Exhibit A



Printed: 9/1/2010 10:02:39 A

Sharp Rees-Stealy - Downtown Urgent Care

619-446-1575

2001 Fourth Avenue, San Diego, CA

Patient Name: HOLSENBACK, JOHN

Medical Record: 4224003

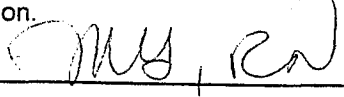
Emergency Care Provider:

WORK/SCHOOL/PHYSICAL EDUCATION LIMITATIONS

The person shown above was treated at Sharp Rees-Stealy Urgent Care on 9/1/2010 7:58:54 AM. They should be medically excused or limited at work or school as indicated below:

Limitations: Off work 9/1 thru 9/3/10

If you have questions about the patient's condition, a records release form from the patient is required before we can provide further information.

Provider/Nurse  Date: 9/1/2010

Comments:



Sharp Rees-Stealy - Downtown Urgent Care

2001 Fourth Avenue
San Diego, CA 92101
619-446-1575

Patient Name: HOLSENBACK, JOHN
Emergency Care Provider: Gwinn, Richard
Diagnosis: Pneumonia
Medical Record Number: 4224003

Site: DUC

Date: 9/1/2010 10:02:38 AM
Admit: 9/1/2010 7:58:54 AM
Discharge: 9/1/2010 10:00:07 AM

Discharge Instructions General Information

Thank you for using Sharp Rees-Stealy Medical Group Urgent Care services. The Downtown Urgent Care is available every day, including holidays, at selected facilities throughout San Diego County.

The Sharp Rees-Stealy Medical Group Urgent Care services are not a substitute for complete medical care. It is important that you understand that further treatment of your illness or injury may be required. To arrange for necessary follow up care, please call for an appointment as soon as possible. If you cannot keep an appointment you have made, please call to cancel so that the time can be made available to someone else. Please arrange further care as needed.

After Care Instructions

The following instructions are provided to you for the continuing care of your condition:

PNEUMONIA:

The evaluation of your symptoms indicates that you have pneumonia - an infection of the lung. Symptoms may include fever, chills, pain with breathing, shortness of breath, cough, and discolored sputum. There are many different kinds of bacteria and viruses that cause pneumonia. The severity of the illness varies a lot also - from very serious to mild "walking pneumonia". It does not appear that hospitalization is needed for you at this time.

Treatment of pneumonia often consists of antibiotics, rest and increased fluids. Other medicines may be needed for relief of fever, pain, or cough. You should start to gradually get better in several days, but you may need longer to be completely recovered. If you are a smoker, now is an excellent time to quit.

Elderly persons and those with chronic illnesses may need to have a vaccine that may prevent one kind of bacterial pneumonia. Ask your doctor if you should receive this.

NOTIFY YOUR DOCTOR or return here in case of the following:

- You are not starting to improve in several days.
- Cough that is worsening, or blood in your sputum.
- Difficulty or increased difficulty breathing or swallowing.
- Chest pain or chest discomfort of any kind, or if your current
- ☐ symptoms change or prolong.
- Vomiting or not able to take enough fluids.
- Prolonged or high fever.
- Severe or worsening headache.
- Change in mental status - too sleepy, confused, short of breath,
- ☐ more irritable or fussy, slurred speech, difficulty walking.

Referrals

If you have been referred to a specialist, please call the physician listed, or the physician of your choice, and make an appointment. Tell the office that you were seen by Urgent Care, and that you need the earliest appointment possible. If you experience difficulty getting in to see the doctor, you may call Urgent Care for assistance.

Follow Up Instructions

If you have any questions regarding your Urgent Care visit, or experience a worsening of your condition, call 619-446-1575 for assistance. Be sure to tell the operator you are calling about an Urgent Care visit; Urgent Care staff can only accept calls relating to a specific visit. Calls for other advice should be directed to your Primary Care physician or to Nurse Connection at 858-499-2600.

Medications

Be sure to take medications as directed on the label. If you feel that you are having any side effects or unusual reactions to a medication, contact the Urgent Care center or your doctor.

<u>Medication</u>	<u>Strength</u>	<u>Quantity</u>	<u>Dose</u>	<u>Frequency</u>	<u>Instructions</u>
Azithromycin	250mg	#6	2 now	then 1/day	until gone
Guaifenesin/Codeine		120ml	5-10 ml	every 4hrs	for cough
Prednisone	10mg	#15	5-4-3-2-1	over 5 day	

Meds

Sample Meds info

I ACKNOWLEDGE THAT I HAVE RECEIVED AND UNDERSTOOD MY INSTRUCTIONS, AND THAT IT IS MY RESPONSIBILITY TO MAKE APPROPRIATE ARRANGEMENTS FOR FOLLOW UP CARE.

I HEREBY AUTHORIZE RELEASE OF URGENT CARE RECORDS FROM THIS VISIT TO THE HEALTH CARE PROVIDER SHOWN ABOVE.

Patient Representative

Time

Date

Witness

Time

Date

Exhibit B



Evan Kalooky <evan.kalooky@gmail.com>

FW: Rubio

1 message

Dan Holsenback <Dan@holsenbackapc.com>

To: Evan Kalooky <evan.kalooky@gmail.com>

Wed, Sep 1, 2010 at 10:53 AM

From: Bernard Hansen [mailto:bernardmhansen@sbcglobal.net]**Sent:** Wednesday, September 01, 2010 10:46 AM**To:** Dan Holsenback**Subject:** Rubio

Dan:

I am willing to agree to a continuance of the hearing date and last day to file your motion re: amending the complaint.

Bernard M. Hansen, Esq. (Cal. Bar No. 115751)

3465 Camino Del Rio South, Suite 250

San Diego, CA 92108-3905

(619) 283-3371

Facsimile (619) 282-8900

bernardmhansen@sbcglobal.net

PROOF OF SERVICE AND CERTIFICATION

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 4960 Lantana Drive, #12, San Diego, California 92105.

On September 1, 2010, I served the foregoing document(s) described as: (1) PLAINTIFFS' REQUEST FOR AN EXTENSION TO DEADLINE TO FILE MOTION FOR LEAVE TO AMEND AND HEARING DATE THEREON & (2) PROOF OF SERVICE

on ALL INTERESTED PARTIES in this action by placing ☐ the original ☒ a true copy thereof addressed as follows:

Bernard M. Hansen, Esq.
3465 Camino Del Rio South, Suite 250
San Diego, CA 92108-3905
Attorney for Defendants
Fax Number: (619) 282-8900

On the above date:

- ☒ (BY ☒ U.S. MAIL/☐ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with J. Daniel Holsenback APC's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.
- ☐ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.
- ☐ (BY FACSIMILE TRANSMISSION)
- ☐ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to Mr. Hansen, on the date set forth above.
- ☐ (BY PERSONAL SERVICE) I delivered such envelope by hand to the addressee.
- ☒ (FEDERAL ONLY) I declare that I am a member of the bar of this court.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.
Executed on September 1, 2010, at San Diego, California.


Evan Kalooky